

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL  
FILE

In the Matter of

Amendment of the Commission's  
Rules to Establish New Personal  
Communications Services

Gen. Docket No. 90-314  
ET Docket No. 92-100

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PP-35 through PP-40, PP-79  
through PP-85

COMMENTS

OF

FLORIDA CELLULAR RSA LIMITED PARTNERSHIP

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

David L. Hill  
Audrey P. Rasmussen  
O'Connor & Hannan  
1919 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, D.C. 20006  
(202) 887-1400

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## SUMMARY

Florida Cellular RSA Limited Partnership commends the Commission for recognizing the potential for Personal Communications Services to meet the future communications needs of the American public. However, Florida Cellular urges the Commission to proceed cautiously in this matter. The Commission looks to reallocate a significant amount of spectrum dislocating existing users to meet what it perceives to be a significant immediate demand for personal communications services (PCS). Florida Cellular feels that ill-advised short-range policies will waste spectrum by assigning it to something that appears to be a great idea but may be of limited utility or duplicate existing services such as cellular already poised to provide new and innovative communications options to consumers.

Notwithstanding Florida Cellular's overall concerns, Florida Cellular strongly believes that if the Commission proceeds with its present PCS proposals that it must create a level playing field to ensure that existing cellular operators participate fully without any artificial boundaries in the potential development and provision of personal communications services in America. Accordingly, cellular operators must be permitted to participate for PCS licenses without restriction including licenses in areas where the cellular operator provides cellular service. Likewise, there should be no set-asides for the local exchange carriers or anyone else.

The ultimate regulatory framework should enhance the competitive playing field, not hinder it. It is Florida Cellular's view that PCS providers should be treated as private carriers with minimal regulatory burdens. Florida Cellular also urges the Commission to reconsider its regulatory treatment of existing Part 22 cellular providers to eliminate any unnecessary restrictions so that they will also be able to compete fully in a process of bringing these emerging technologies to the American public.

I.

INTRODUCTION

Florida Cellular RSA Limited Partnership, an Illinois Limited Partnership, submits these its comments on the Notice of Proposed Rule Making and Tentative Decision in the above matter released August 14, 1992. Florida Cellular RSA Limited Partnership ("Florida Cellular") holds licenses for cellular Rural Service Areas Florida 1 - Collier and Florida 3 - Hardee. In addition, James A. Dwyer, Jr., one of the principals of the Florida Cellular RSA Limited Partnership is involved in various other cellular activities through related entities in Pennsylvania, Ohio and West Virginia.

Mr. Dwyer has been involved in mobile communications matters for over 25 years. He was a participant in the Commission's original cellular rulemaking in 1971. He has been involved in cellular operations since 1983. Mr. Dwyer filed Comments in his name in response to the 1990 Notice of Inquiry in the proceeding and in response to issues raised at the December 5, 1991 en banc hearing.

II.

BACKGROUND

The instant Rule Making ("Notice") which seeks comments on the structure and regulatory framework for PCS is the culmination of a proceeding initiated in 1989 in response to several petitions for rulemaking. The Commission subsequently issued a

Notice of Inquiry, 5 FCC Rcd 3995 (1990), a policy statement, 6 FCC Rcd 6601 (1991), held a hearing addressing PCS and initiated a proceeding to make spectrum in the 2GHz band available for PCS.

In releasing its Notice, the Commission in paragraph 6 emphasized: "We intend to ensure that all mobile services are provided with the highest quality at low cost, reasonable rates to the greatest number of consumers, consistent with the goals of the Communications Act." To achieve this goal, the Commission concluded that it must optimize and balance four values:

1. Universality
2. Speed of Deployment
3. Diversity of Service; and
4. Competitive Delivery.

While the Notice is comprehensive in scope, the critical issues are how many licenses should be issued and to whom; how should the licenses be allocated (lotteries, hearings or auctions); how should market size be defined and how should PCS be regulated (common carrier or private). A related but equally critical issue is the availability of spectrum for PCS. In a separate proceeding, the Commission has identified 220 MHz within the 2GHz band for PCS use. The availability of spectrum is fundamental to realizing the benefits of PCS and is closely tied to the Commission's tentative findings of need for PCS.

### III.

#### DEFINITION AND NEED FOR PCS

The critical assumption underlying the Commission's Notice is that there is a need for PCS. However, before an analysis of

need can be addressed, one must be able to define PCS. The Commission in its Notice at paragraph 29 defines PCS "as a family of mobile or portable radio communications services which could provide service to individuals and business and be integrated with a variety of competing networks." The only specificity provided with respect to this very vague definition is that spectrum allocated for PCS may not be used for broadcasting services and that fixed services would be allowed only as ancillary to mobile PCS services.

PCS promoters and developers have many different ideas about what it is and how the concept fits the big picture. It appears that PCS will consist of a range of complimentary services. It will therefore encompass a wide array of radio-based communications services. The basic forms of PCS today include cordless telephones (CT-2), pagers and car/portable telephones. We also know that early PCS offerings have been micro-cellular in design.

Notwithstanding the vague definition of PCS, the FCC assumes that there is a steadily increasing consumer and business interest in new mobile services that current radio services, including radio paging and cellular, cannot fully meet. The Commission recognizes that cellular and specialized mobile radio services will be able to provide some of the new services with their currently allocated spectrum. However, concludes at paragraph 25 without substantiation that "they cannot meet the full range of demand for PCS within a competitive framework."

This so-called demand is not defined, and the Commission has failed to demonstrate with specific showing that it exists. Moreover, the Notice fails to recognize that existing cellular carriers are involved with numerous PCS experiments and are in the forefront of experimenting with data transmission over cellular networks.

The Commission also interjects as justification for a PCS allocation that PCS is a way of providing additional competition to current mobile radio services, in particular, cellular services. The Commission provides no factual support for this competition assumption and does not address the potential costs to the cellular industry or the consumer of the introduction of the artificial competition solely for the sake of competition. It appears that this may be the Commission's only basis for supporting the massive allocation of spectrum.

Finally, the Commission supports its allocation of spectrum in the 2GHz band pointing to the international trend which is moving toward PCS operations in the 1800 to 2200 MHz band. The Commission seems to think that a similar allocation will facilitate the export of American products and services and decrease the price of equipment due to economies of scale.

While the Commission's focus on PCS is clearly timely, it should approach the situation carefully. A purposeful, but cautious approach will help avoid wasting spectrum by reassigning it to something that appears to be a great idea, but may be of limited utility or duplicate existing services already poised to provide new and innovative options to consumers.



#### IV.

##### NUMBER OF PROVIDERS/SIZE OF SPECTRUM BLOCKS

The Commission in its Notice announced that its goal is to provide a frequency allocation that allows for the provision of the widest range of PCS services at the lowest cost to consumers. The Notice recognizes the relationship between the availability of spectrum, the size of the blocks available for licensees and the potential number of licensees or providers of PCS service. Accordingly, the Commission seeks comments on the merits of authorizing 4 or 5 PCS operators per market.

Florida Cellular does not take a position on the number of providers or the size of spectrum blocks. However, consistent with its theme throughout these comments, existing cellular carriers must also have access to the PCS spectrum. Thus, in determining the optimum number of providers, the Commission must provide for sufficient spectrum to accommodate existing cellular licensees among the eligibles for the PCS spectrum as well as to support its design for more competition. The Commission must maintain a level playing field in the PCS arena for both cellular and non-cellular PCS providers.

#### V.

##### UNLICENSED DEVICES

Florida Cellular thinks that the Commission's willingness to deal with unlicensed devices is to be commended. To the extent

that PCS devices can be developed, which meet the technical specifications of Part 15 for unlicensed operations, the consumer will be the beneficiary. Unlicensed devices by their very nature would not, and should not, impact the overall licensing scheme contemplated in the Notice. Accordingly, the approach sounds good, and the Commission should proceed consistent with long established technical specifications to permit innovative potential to be realized through unlicensed devices.

## VI.

### 900 MHZ ALLOCATION

The Commission in the Notice has requested comments on its proposal to allocate 3 channels in the 900 MHz band, 901-902, 930-931 and 940-941 MHz, for what it has dubbed "narrow-band" PCS. These 900 MHz allocations it is assumed will be used primarily for technologically advanced forms of paging. While this allocation is important, it does not necessarily require the same considerations as the broader PCS issues highlighted in the Notice. Accordingly, Florida Cellular suggests that the Commission treat the 900 MHz allocations separately since it does not necessarily have to consider it in the context of the broader PCS issues.

## VII.

### LICENSING ISSUES

#### A. PCS Service Areas

The Commission tentatively concluded that PCS services areas should be larger than those initially licensed in cellular and provided 4 options for consideration:

Option 1: 487 basic trading areas as defined in the Rand McNally Commercial Atlas and Marketing Guide plus Puerto Rico.

Option 2: The 47 trading areas defined in the Rand McNally publication plus Alaska and Puerto Rico for a total of 49 regional licenses.

Option 3: The 194 telephone LATAS.

Option 4: Nationwide.

Florida Cellular opposes the concept of a nationwide license. The nationwide approach as the Commission recognized would provide for the smallest number of firms to participate thereby minimizing the potential for innovation and competition. The Commission's support for nationwide licenses based upon enhancement of competition in foreign markets is not supportable. It does not matter how other countries license PCS. The ability of American entities to participate in the provision of communications services in foreign countries depends more on the foreign country's laws dealing with foreign ownership in their domestic communications operations than on whether it holds a nationwide PCS license from the FCC. As to equipment providers, the American manufacturers will be looking more to the

total worldwide potential than to the FCC's PCS licensing scheme. The Commission seems to be willing to vest substantial spectrum in the hands of a few nationwide licensees, yet at paragraph 81 of the Notice indicates "concern" about possible concentration of spectrum among a few entities. If there is truly a concern about concentration, the Commission should not award any nationwide licenses.

Florida Cellular RSA Limited Partnership opposes nationwide licensing. Further, it submits that the description of the licensing areas must maintain a level playing field for existing cellular operators. In other words, if as Florida Cellular advocates, PCS licenses are available to both existing cellular carriers and non-cellular PCS providers, the description of the service area or licensing area is not critical. However, if the Commission is not prepared to maintain the level playing field, it must follow the cellular MSA/RSA boundaries to maintain competitive parity between cellular and non-cellular PCS providers. This is true if for no other reason, because it would be unfair to allow interconnection to greater territory for PCS licensees than cellular licensees.

#### **B. Eligibility Requirements**

The Commission concluded in its Notice that PCS and cellular licensees serving the same areas would compete on price and quality even though they may not be offering an identical package of services. This competition the Commission expects will

benefit the consumer by lower prices and innovative products and services. The Commission is concerned that competitive benefits might be reduced if existing cellular licensees were permitted to acquire PCS licenses within their cellular service areas. The Commission also pointed to a General Accounting Office study, "Concerns About Competition in the Cellular Telephone Industry," July 1992, that concludes that there is only limited competition within the existing cellular markets. Thus, the Commission tentatively decided that it would permit cellular providers to obtain PCS spectrum licenses only outside of their cellular service areas, but sought comments on whether cellular service providers also should be allowed to obtain PCS spectrum within their cellular service areas.

It is Florida Cellular's position that there should be no limitation on the ability of existing cellular licensees to participate for PCS authorizations. Cellular licensees should be permitted to hold PCS licenses for the cellular service areas that are served as well as other areas. Clearly, the Commission is attempting to provide direct competition to cellular licensees through the PCS allocations. Yet, it is advocating that cellular companies should be precluded from providing PCS services within their cellular markets. However, if competition and innovation are truly the goal of the Commission in this proceeding, then cellular operators should be allowed to acquire PCS licenses within their cellular service areas. As long as others are licensed and there are a variety of providers in the market, the

goal of competition will be realized. Any artificial limitations should be avoided. There should be free and unfettered competition in the marketplace permitting existing cellular provider to participate for PCS licenses in their cellular service areas.

Without prejudice to its position with respect to cellular eligibility for PCS licenses, Florida Cellular supports further liberalization of the Commission's existing rules to permit cellular licensees to make better use of existing spectrum. Any time that better use can be made of existing spectrum, the public benefits. As this proceeding has painfully brought to everyone's attention, spectrum is scarce. To the extent better use can be made of existing spectrum to implement advanced cellular technologies and to provide auxiliary services, the Commission should not hesitate. There should be no unnecessary or artificial limitations on the ability of existing cellular carriers to maximize their range of offering to the consumers. If competition is truly the goal here, no other result is supportable.

#### **C. Local Exchange Carriers (LECs)**

The Commission anticipates that PCS is likely to be both a compliment and potential competitor to local wireline exchange service. Accordingly, the Commission feels that allowing local exchange carriers to provide PCS within their current service areas may encourage the LECs to develop their wireline

architecture in a PCS friendly way. Thus, the Commission tentatively concluded that there is a strong case to allow LECs to provide PCS within their respective service areas.

This tentative conclusion is in marked contrast to the Commission's concern with respect to existing cellular carriers providing PCS service within their existing cellular service areas. However, it would appear that the same rationale should apply. If LECs are allowed to provide PCS within their own local exchange areas, cellular carriers should surely be able to provide PCS within their existing cellular service areas.

Nonetheless, as argued below, Florida Cellular is opposed to any set-aside. LECs should not be precluded from participating in PCS, but the LECs should have no special preferences. They should be treated the same as cellular. There is no justification for allowing the LECs to acquire spectrum for PCS through a set-aside mechanism. Consistent with the level playing field, all competitors for available PCS spectrum should be on an even footing.

The Commission states that it has tentatively decided to award 10 MHz of spectrum directly to LECs for deployment by PCS systems. This constitutes an unfair competitive advantage since the LECs already have extensive infrastructure to support transport of the PCS network into the local telephone system. Such treatment will extend monopoly rather than promote competition. By the very fact that LECs have such an extensive infrastructure, right down to the local loop, the concept of the

additional wireless local loop is incredulous. This would afford only an economic advantage to the LECs enhancing the monopolies since it would not necessitate physical construction of cable plant to the end users.

While Florida Cellular opposes any set-asides for local exchange carriers, it does not oppose their participation for PCS licenses. However, the structural mechanisms utilized in cellular i.e. separate subsidiaries, should be required. The local exchange carriers still control the gateways that will be required by non-LEC providers of PCS service and the potential for anti-competitive conduct is real. The separate subsidiary mechanism is a minimal burden to deflect anti-competitive activities.

To further minimize the potential for anti-competitive conduct, there must be no restrictions or interconnection. The Commission, at paragraph 99 of its Notice, proposes to confirm whether PCS is classified as private or common carrier, that PCS licensees have a federally protected right to interconnection to the public switched telephone network. This recognition is essential. The Commission should not waiver in its commitment to ensure that the right to interconnection is fully recognized and fully implemented.

#### **D. Licensing Mechanism**

Under the present state of the law, the Commission must choose between competing applicants for a limited number of



licenses through the traditional comparative hearing process or by way of lottery. Competitive bidding or auctions are not available to the Commission at this time. Auctions must be authorized by Congress. Accordingly, Florida Cellular suggests that the lottery process is to be preferred to the traditional comparative hearings. However, the lottery process should be simplified to minimize the burden on the Commission and to expedite selection of the eligible licensees.

Filing fees associated with PCS applications should be reasonable and appropriate under the circumstances. The determination of the specific amount should be largely a factor of the cost incurred by the Commission in processing the PCS applications rather than perceived market value.

#### **E. Regulatory Status - Private v. Common Carrier**

As the Commission recognizes, one of the most important issues presented in connection with PCS is the regulatory classification of PCS licensees. In light of the contemplated substantial competition both from related service providers as well as with other PCS providers, the Commission concludes that PCS should be subject to minimal regulation. Accordingly, the Commission seeks comments on whether PCS should be classified as a common carrier or private land mobile radio service.

Florida Cellular supports classification as private carriers. As the Commission recognized in its Notice, PCS will be subject to substantial competition providing strong incentive

to offer attractive service and prices. The classic monopoly regulation which traditionally has been associated with common carrier offerings is not appropriate to the competitive wireless environment that has developed and continues to develop. It is recognized that under the existing law, the test for private land mobile service is that a licensee not resell interconnected telephone service for profit. However, it is submitted that this has been honored more in its breach than its observance. The interconnection to the telephone network is essential for PCS to realize its potential. Accordingly, this should be recognized whether it results in resale of interconnected telephone service for a profit or not.

In order to maintain that level playing field, the Commission should reclassify existing Part 22 common carrier cellular licensees as private carriers to maximize competition among cellular and non-cellular PCS providers. Otherwise, maximum competition, and therefore innovation, will not be realized if the two must compete under different frameworks. Since service to the customer is functionally the same whether offered by a private or common carrier, the distinction, other than its competitive impact, is meaningless. Therefore, it should not be used to penalize the cellular industry which, despite the regulatory obstacles, has delivered competitive, innovative service to all the United States in less than ten years.

## **F. Technical Standards**

While Florida Cellular at this point is not providing detailed comments on the proposed technical standards, it does point out that the proposed standards appear to be inconsistent with the PCS design concept of micro-cellular or low power systems typically with base stations of less than ten watts ERP.

For example, the Commission states that "900 MHz systems would be limited to a maximum effective radiated power (ERP) of 3500 watts." In contrast, cellular systems were initially authorized 100 watts ERP and only recently 500 watts ERP outside of MSAs or as exceptions within MSAs. PCS has been conceived as a network of transmitters with coverage areas one-tenth that of traditional cellular systems. Thus power limits of 3500 watts is contradictory to the whole PCS concept. It is a sham. This is more power than cellular for a micro-cellular application. The proposed power limits must be reduced to less than thirty five watts ERP for successful deployment of the PCS network.

Cellular Systems at 100 to 500 watts ERP have made frequency coordination difficult at best. The ability to utilize more than 100 watts ERP has been curtailed because of co-channel and adjacent channel interference. If the 3500 watts ERP limit is permitted, almost three times the geographic area will need to be investigated for frequency interference and frequency coordination. As an experienced cellular operator, Florida Cellular submits that 3500 watts ERP is not only technically unwise but operationally ill-advised because of interference

coordination conflicts that will require Commission intervention to resolve. In addition, absent the development of new customer transceivers the radius of reliable coverage for either cellular or PCS hand-helds will remain less than 5 miles. Thus, there is no conceivable reason to transmit from a control transmitter at higher power than mobile can talk back.

The Commission states that it is not proposing "intersystem operability among different licensees." This in Florida Cellular's opinion will be detrimental to the consumer. Florida Cellular recognizes that there are a plethora of national and international standards being promoted. While it may be premature to choose among these, the Commission should commit to move toward one or two standard PCS technologies that meet the long term needs of the consumer.

The whole idea of PCS or extended cellular is mobility. This mobility certainly is not confined to a small office. It is meant to be worldwide in application. Thus, the Commission should take steps to ensure that PCS investment will be applicable over a wide range of networks throughout the nation.

Along with the standards of compatibility, the Commission needs to address the problem of fraudulent use of wireless devices. Experience in the cellular industry has proven that this is a problem costing the industry, and eventually the consumer market, millions of dollars in direct costs. While the cellular industry is attempting to curtail this thievery, it should be recognized that the advent of PCS will exponentially

increase the fraudulent losses if protective measures are not implemented in the beginning. Because of key encryption systems and other protective measures, wireless systems such as GSM and the NORDIC systems are not as susceptible to fraud as the vulnerable AMPS standard. The Commission should ensure that standards are developed as part of the PCS process.

#### VIII.

##### PIONEER'S PREFERENCE

The Commission states that its tentative decision is to grant Mobile Telecommunications Technologies Corporation (Mtel) "pioneer's preference" for having developed and demonstrated significantly improved bit transmission rates for data transmission using the Multi Carrier Modulation (MCM) technology.<sup>1/</sup> While this does lend itself to increased throughput, it does not support the Commission's requirement of "significant communications innovations." For instance, the Nippon Electric Corporation (NEC) has already introduced paging technology with transmission rates in excess of 6250 bits per second.

Classical techniques of Foreward Error Correction (FEC) and data compression such as Reed Solomon (RS) and Bose Chaudrey (BCH) have been implemented and proved successful to gain throughput efficiency. Mtel claims spectral efficiencies of .36

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<sup>1/</sup> The FCC by News Release, Report No. DC-2240, released October 8, 1992, announced tentative Pioneer's Preference to three applicants for new personal communications services in Docket 90-314.

bits per Hertz. However, both RS and BCH have attained even greater efficiencies. The real measure of efficiency is bit error rate in transmissions along with actual message throughput, not just raw data bit transmissions. Mtel claims techniques using orthoganal M-ary frequency shift keying (FSK) modulations. FSK is one of the earliest and most dated forms of technology to communicate digital information. However, studies under Rayleigh fading do not support adequate bit error rates at the 24,000 bps effective data rate claimed attainable by Mtel.

Mtel proposed the use of Contention Priority Ordered Demand Assignment (CPODA) and states that this requires the network to maintain "tight control" with the need for synchronizing all network transmitters. All transmissions are scheduled based on a global clock. This translates into very sophisticated and unnecessarily expensive devices incorporated into the user terminals. Since the terminals are anticipated as either notebook or palm-top computers, the prudent consumer would opt for other types of more economical communication methods and/or links.

Much research and investigation for wireless data communication has been invested in packet radio techniques using ALOHA packet radio protocol methods. The actual hardware/software to implement this protocol is more suited to the user Mtel believes is a candidate for its proposal. This is because the ALOHA packet radio protocol can be implemented with standard integrated circuit/firmware technique readily "pluggable" into the smallest of portable personal computers with no need for clock synchronization circuitry.

Since the Mtel system requires specialized hardware with timing restraints, it would naturally be a specialized application with at best only small regional acceptance. This approach certainly does not require a nationwide license. Award of such would result in the Commission forcing the consumer into a particular specialized communication method inconsistent with the goals of the Commission as defined in paragraph 6 of the Notice.

As the technical discussion above shows, the pioneer's preference has the potential for abuse if not carefully monitored by the Commission. The preference has become nothing more than a joke. It is being used as a way to establish an early "land grab" further fueling the speculative endeavors of application mills.

The number of experimental licenses and requests for preferences has increased during the last year since comments were filed in response to the initial Notice. It would appear that in some cases the only economically sound reason for a pioneer preference would be to establish a preferential license. If this is in fact the case, or even perceived to be the case, the present activity will be a mere trickle compared to the flood of speculation that will follow. The rush to file poorly developed speculative proposals will not only slow the regulatory process but will actually impede the introduction of new services. The Commission has but to review the record of speculative abuses in cellular license applications which has impeded the implementation of a national network for nearly ten (10) years.

## IX.

### CONCLUSION

While Florida Cellular feels that the Commission's PCS proceeding is timely, ICN urges a purposeful, cautious approach by the Commission in developing its PCS regulatory framework. Its findings relating to need and competition in its Notice are conclusionary and without factual support. It looks to take significant spectrum from existing licensees for a concept that is ill-defined and for which there is little or no demonstrated demand. The Commission looks to take away spectrum from established licensees whose only sin is that they are using spectrum that the Commission wants to take back. This is all the more reason to make sure that the need for the spectrum is clearly demonstrated.

PCS has been ill-defined, or in other words, broadly defined to include a wide range of existing as well as future radio services. Obviously, this broad definition includes cellular service. The cellular industry is clearly poised to continue bringing the benefits of emerging technologies to the American consumer in a wide variety of ways as it already has done. The cellular industry should be permitted to freely compete in this arena. There should be no artificial barriers if the Commission is going to realize the perceived benefits of competition for the consumer. There should be no set-asides for the local exchange carriers or anyone else. Cellular operators should be permitted



to participate freely for PCS licenses including the areas where they presently provide cellular service. PCS markets should not be defined to allow interconnection advantages vis a vis cellular carriers. If PCS licensees are deemed to be "private" the cellular carriers should likewise be reclassified as "private."


The knowledge of the basic technology underlying PCS/PCN is widespread. There is no monopoly on this knowledge or upon experience or innovation. The Pioneer's Preference should not be awarded automatically. Otherwise, the level playing field will never be realized and the public denied or delayed access to the innovative benefits that PCS can bring.

Florida Cellular respectfully request that the Commission take these comments into consideration in fashioning its regulatory scheme for PCS.

Respectfully submitted,

**FLORIDA CELLULAR RSA LIMITED  
PARTNERSHIP**

By:

  
David L. Hill  
Audrey P. Rasmussen  
Its Attorneys

O'Connor & Hannan  
1919 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, D.C. 20006  
(202) 887-1400

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